

STATE OF MICHIGAN  
COURT OF APPEALS

---

*In re* SMITH/ASHFORD, Minors.

UNPUBLISHED  
June 21, 2016

No. 330732  
Wayne Circuit Court  
Family Division  
LC No. 07-473092-NA

---

Before: METER, P.J., and SHAPIRO and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court's December 7, 2015 order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), (i), and (j).<sup>1</sup> We affirm.

This appeal arises out of the termination of respondent's parental rights to two children, DES and WDA. In 2012, DES was removed from respondent's care after testing positive for marijuana at birth. Respondent admitted that she used marijuana during her pregnancy. Approximately 20 months later, respondent gave birth to WDA, and WDA was removed from her care one month later. Both children were removed from respondent's care in light of respondent's various mental health issues<sup>2</sup> and her continued abuse of marijuana. After respondent failed to make meaningful progress despite being offered various services, the Department of Health and Human Services (DHHS) filed a supplemental petition seeking the termination of respondent's parental rights to both children. On December 7, 2015, nearly four years after DES was originally removed from respondent's care, the circuit court entered an order terminating respondent's parental rights pursuant to the statutory grounds set forth above.<sup>3</sup> This appeal followed.

---

<sup>1</sup> The parental rights of the children's fathers are not at issue in this appeal.

<sup>2</sup> The record reflects that respondent suffers from schizophrenia and depression and may be developmentally disabled.

<sup>3</sup> Respondent's parental rights to two other children were previously terminated in 2008 and 2011, respectively, due to abuse and neglect.

On appeal, respondent challenges the circuit court's statutory-grounds determination. Specifically, she argues that the circuit court erred in concluding that clear and convincing evidence supported the termination of her parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), (j), and (i) based on the inadequacy of the services provided by DHHS. Relatedly, respondent argues that the inadequacy of services provided by DHHS violated her parental rights pursuant to the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*

Pursuant to MCL 712A.19b(3), a circuit court may terminate a parent's parental rights if it finds that at least one of the statutory grounds has been established by clear and convincing evidence. Petitioner bears the burden of proving at least one statutory ground. MCR 3.977(A)(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's finding that a statutory ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the [circuit] court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (citation and internal quotation marks omitted). To be clearly erroneous, a factual finding must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

In this case, the circuit court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), (j), and (i), which provide for the termination of a parent's parental rights if the following are found by clear and convincing evidence:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Here, we conclude that the circuit court did not clearly err in determining that at least one of these statutory grounds were proved by clear and convincing evidence. The evidence presented at the termination hearing (as well as throughout the proceedings) demonstrated that the conditions that led to the adjudication, i.e., respondent's mental health issues and marijuana abuse continued to exist, and there is nothing in the record to support a conclusion that there was a reasonable likelihood that these conditions would be rectified within a reasonable time based on DES's and WDA's ages. MCL 712A.19b(3)(c)(i).<sup>4</sup> The record also supports the circuit court's determination that respondent failed to provide proper care and custody to the children based on these conditions that continued to exist, and there is nothing in the record to support a conclusion that she would be able to do so in the future in light of the children's age. MCL 712A.19b(3)(g). Similarly, our review of the record reflects clear and convincing evidence in support of a conclusion that there was a reasonable likelihood that the children would be harmed if returned to respondent's home in light of these continuing conditions. MCL 712A.19b(3)(j).<sup>5</sup> Finally, it is undisputed that respondent's parental rights to two other children were terminated due to abuse and neglect. MCL 712A.19b(3)(i). Additionally, as discussed in more detail below, respondent failed to both participate in and benefit from the services that were provided. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). The record reflects that respondent was provided years of services in relation to both of the children at issue here (as well as in relation to her two other children), and she failed to take advantage of those services. Accordingly, we conclude that the circuit court correctly determined that at least one statutory ground was proved by clear and convincing evidence.

“Once a statutory ground for termination has been proven, the [circuit] court must find that termination is in the child's best interests before it can terminate parental rights.” *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5); MCR 3.977(E)(4). “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *Moss*, 301 Mich App at 90. Circuit courts should consider all available evidence in making this determination. *Trejo*, 462 Mich at 356. Relevant factors to be considered include the bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of the foster home over the parent's home, and any other relevant factors. *Olive/Metts*, 297 Mich App at 41-42.

---

<sup>4</sup> Respondent either missed or tested positive for marijuana at drug tests consistently throughout the entirety of this matter. Additionally, while DHHS provided respondent substance abuse therapy, the record reflects that this service was terminated by the provider due to respondent's lack of cooperation.

<sup>5</sup> In support of the circuit court's determination under MCL 712A.19b(3)(j) is also the fact that respondent's failure to obtain and maintain adequate housing remained an issue throughout the entirety of this case. Respondent's housing was consistently inappropriate for the children for several different reasons including, for example, because someone in the home was inappropriate, because the home was being foreclosed on, or because the home did not have adequate supplies for the children.

While not expressly challenged by respondent on appeal, we also conclude that the circuit court did not err in determining that the termination of respondent's parental rights was in the children's best interests. As indicated above, there were a variety of conditions that led to the adjudication in this matter, and those continued to exist at the time of the termination hearing. Specifically, each witness that testified expressed concerns regarding respondent's failure to adequately participate in and benefit from a variety of services, including mental health treatment. Additionally, respondent continued to abuse marijuana despite the fact that marijuana was determined to counteract the benefits of biweekly Risperdal injections that she received to address her mental health issues. Indeed, on one occasion, respondent even smoked marijuana immediately before a review hearing in hopes of demonstrating her ability to function while "high" before the court. In short, it is apparent that respondent does not appreciate the impact of her marijuana abuse on her or her children's well-being. We also note that the children have been placed in the same foster home and have made significant progress during the pendency of this case. Accordingly, we conclude that the circuit court did not clearly err in determining that the termination of respondent's parental rights was in the children's best interests.

On appeal, respondent argues that the termination of her parental rights violated her rights under the ADA because the services that were provided were inappropriate in light of her cognitive limitations. The record indicates otherwise.

The ADA requires public agencies, including DHHS, "to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services. Thus, the reunification services and programs provided by [DHHS] must comply with the ADA." *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). "[I]f [DHHS] fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *Id.* at 26. Nevertheless, once a child has "come within the jurisdiction of the family court, a parent, whether disabled or not, must demonstrate that [he or] she can meet [the child's] basic needs before [the child] will be returned to [his or] her care." *Id.* at 28. If a parent cannot do so, "the needs of the child must prevail over the needs of the parent." *Id.* (citation and internal quotation marks omitted).

In this case, the record reflects that, contrary to her arguments on appeal, respondent was provided reasonable accommodations.<sup>6</sup> It appears undisputed that respondent has been receiving mental health treatment, including biweekly Risperdal injections, and therapy since

---

<sup>6</sup> Various services relating to respondent's mental health issues were offered to respondent throughout these proceedings aside from those that were additionally offered in an attempt to further accommodate her cognitive limitations. Specifically, DHHS provided a psychological evaluation, a psychiatric evaluation, individual therapy, and medication reviews in addition to the others discussed in this opinion. Respondent's participation in and benefit from these services was certainly not consistent, and some of the services were terminated by the providers due to her lack of cooperation.

approximately 2007 or 2008.<sup>7</sup> Nothing in the record, including respondent's own testimony, suggests that these services were insufficient. Consistent with these services, the circuit court also expressly ordered DHHS to take the "extra step" and provide services specifically designed to address respondent's cognitive limitations. Otherwise, the circuit court explained, "we do a disservice to her to just send her off to regular old parenting classes or any other service." Respondent was thereafter provided an opportunity to participate in services with the Neighborhood Services Organization (NSO), an organization that provides specialized services for individuals with cognitive and developmental disabilities.<sup>8</sup> But, respondent failed to take advantage of this opportunity.<sup>9</sup> It took several months for respondent to participate with NSO at all, and, even then, the record reflects that she failed to adequately benefit from those services. While it appears that the parenting classes and housing, employment, and life skills services were not specifically tailored to individuals with cognitive limitations, the record reflects that these, nevertheless, were appropriate for respondent as well as other individuals with cognitive limitations. In sum, the record reveals that respondent's inadequate participation, not the adequacy of the services offered, is what led to the termination of respondent's parental rights in this matter. And, as stated above, once a child has "come within the jurisdiction of the family court, a parent, whether disabled or not, must demonstrate that [he or] she can meet [the child's] basic needs before [the child] will be returned to [his or] her care." *Terry*, 240 Mich App at 28. If a parent cannot do so, "the needs of the child must prevail over the needs of the parent." *Id.* (citation and internal quotation marks omitted). Accordingly, we conclude that respondent's rights under the ADA were not violated.

Affirmed.

/s/ Patrick M. Meter  
/s/ Douglas B. Shapiro  
/s/ Colleen A. O'Brien

---

<sup>7</sup> The record also reflects that respondent admittedly failed to consistently attend her mental health treatment and therapy appointments, and she often turned to marijuana abuse when she failed to do so. It is this treatment and therapy that is most likely to address her mental health issues, and she failed to sufficiently participate in and benefit from it. That failure simply cannot be attributed to DHHS.

<sup>8</sup> The record reflects that respondent was initially denied NSO services because she had not been diagnosed as developmentally disabled, but DHHS personnel contacted and met with NSO personnel on multiple occasions, and NSO eventually agreed to provide the necessary services.

<sup>9</sup> When NSO agreed to provide the necessary services, the record reflects that respondent refused to participate, claiming that she did not need the services.